

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARIA JARA, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

REDBOX AUTOMATED RETAIL, LLC,

Defendant.

Judge Hon. Virginia M. Kendall
Magistrate Judge Hon. Jeffrey Cummings

No. 1:19-cv-04532

DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Redbox Automated Retail, LLC (“Redbox” or “Defendant”), by and through its attorneys, hereby moves to dismiss the Amended Complaint filed by Plaintiff Maria Jara (“Jara” or “Plaintiff”). In support of its motion, Defendant states as follows:

1. The original complaint in this action was filed by Plaintiff Shawand Ebanks, who alleged that she received text messages from Defendant in violation of the Telephone Consumer Protection Act (“TCPA”). *See* Dkt. 1. Plaintiff Ebanks was subsequently replaced by Plaintiff Jara, who has filed an Amended Complaint alleging receipt of texts from Defendant in violation of the TCPA. *See* Dkt. 17.

2. The text messages Ms. Jara identifies in the Amended Complaint were directed toward Redbox users. *See* Dkt. 17, ¶¶ 15-16. Ms. Jara alleges that Defendant sent these messages without confirming that the telephone numbers to which the texts were sent actually belonged to the persons who provided the numbers to Defendant. *Id.*, ¶ 14. The Amended Complaint also alleges that these texts were sent using an automatic telephone dialing system (“ATDS”) because the technology used to send them had “the capacity to store, produce, and dial random or sequential numbers, or receive and store lists of telephone numbers, and to dial such numbers, *en masse*, in an automated fashion and without human intervention.” *Id.*, ¶ 21.

3. The Amended Complaint fails to state a TCPA claim because Plaintiff Jara has not plausibly alleged that Defendant sent texts to Plaintiff using an ATDS. First, Plaintiff's conclusory assertions of ATDS use misstate the legal definition of an ATDS—*i.e.*, a device with the capacity to store or produce numbers to be called using a random or sequential number generator (47 U.S.C. § 227(a)(1))—and suggest that the technology allegedly used to send the texts at issue did not have the necessary attributes of an ATDS. Second, even if Plaintiff alleged the appropriate legal standard, her minimal factual allegations belie any plausible suggestion that the texts she claims to have received were sent as the result of random or sequential number generation, as the texts were clearly intended to be sent to a Redbox user who provided Plaintiff's telephone number to Redbox. These deficiencies cannot be cured by amendment, and, accordingly, the Amended Complaint should be dismissed, with prejudice, for failure to state a TCPA claim.

WHEREFORE, for the foregoing reasons and the reasons set forth in the accompanying supporting memorandum, Defendant respectfully requests that the Court dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), with prejudice.

Dated: October 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margaret M. Schuchardt, an attorney, certify that I caused the foregoing document to be served upon the following, via the CM/ECF system, on October 1, 2019:

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